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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 848

ERNEST GAILLARD, JR., and MIGNONNE NASH GAILLARD,
Petitioners,

VERSUS

FREDDIE MORGAN FIELD, Administratrix of the Estate of Fred Morgan, Deceased,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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November, 1967

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above entitled cause on July 21, 1967.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Western District of Oklahoma delivered orally on November 30, 1965 (R. pp. 122-124), printed in Appendix B hereto, *infra*, p. v, is unreported. The opinion of the Court of Appeals (R. of Court of Appeals p. 4), printed in Appendix B hereto, *infra*, p. vii is unreported as of date of filing this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on July 21, 1967 (R. of Court of Appeals p. 5). Rehearing was denied on September 18, 1967 (R. of Court of Appeals p. 7). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

Does the refusal of the court below to enforce the law of California, which recognizes certificates of interest in oil, gas or mining titles or leases as securities which must be registered before sale and provides penalties for failure to register such securities before sale, violate the Full Faith and Credit Clause of the Constitution of the United States?

Does the public policy of Oklahoma refuse recogntion of the law of California, which recognizes a certificate of interest in an oil, gas or mining title or lease as a security which must be registered before sale in such state, and which provides statutory penalties for failure to so register, when Oklahoma does not recognize such an interest as a security?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The constitutional provision involved is Article IV, Section 1 of the Constitution of the United States of America. The statutory provisions involved are Section 1738 of the Judicial Code and Judiciary, 62 Stat. 947, 28 U.S.C. 1738; Sections 25,003, 25,008, 25,500 and 26,100 of the Corporate Securities Law of the Corporations Code of

California, Deerings California Codes, and Section 2(l) of the Oklahoma Securities Act, Title 71, Oklahoma Statutes 1961, Section 2(l). They are printed in Appendix A hereto attached.

STATEMENT OF THE CASE

This action was brought in the United States District Court for the Western District of Oklahoma by the petitioners against Fred Morgan to recover certain amounts paid by them for the purchase of unregistered securities sold in California in violation of the California Corporate Securities Law. Fred Morgan filed a counterclaim to recover unpaid expenses incurred by him in the operation of oil and gas wells and leases in which the petitioners owned undivided interests with Mr. Morgan. While the proceedings were pending in the District Court Mr. Morgan died, and upon motions duly presented to that Court, Freddie Morgan Field, Administratrix of the Estate of Fred Morgan, Deceased, was substituted as a party in place of Mr. Morgan, for all purposes. The District Court found in favor of the respondent and against the petitioners and gave the respondent judgment on her counterclaim. The United States Court of Appeals for the Tenth Circuit affirmed the judgment of the District Court on appeal.

The jurisdiction of the District Court was invoked because of diversity of citizenship, the petitioners being residents of the State of California, and the respondent a citizen of the State of Oklahoma.

The petitioners, Ernest Gaillard, Jr., a surgeon, and his wife, Mignonne Nash Gaillard, were and are residents of La Jolla, California. They first met Fred Morgan at a

social function in the home of a mutual acquaintance in La Jolla, in July, 1959. Morgan was a resident of Oklahoma City, Oklahoma, and was vacationing with his family in California at that time (R. 82-83, 160-162).

From discussions with Fred Morgan at said social function, they learned from Morgan that he was in the business of acquiring interests in oil and gas properties and drilling and developing these properties for oil and gas purposes. Mr. Morgan stated that he occasionally discovered opportunities for investment in such properties in areas of proven and commercially profitable production, where the investor's money would be safe. Fred Morgan further stated that when he discovered such opportunities in the future, he would make available to the petitioners, interests in such oil and gas properties (R. 83, 163).

Fred Morgan was the owner of a one-half working interest in a producing oil and gas lease known as the James lease in Lincoln County, Oklahoma. The lease had been incorporated into a plan of unitization approved by the Oklahoma Corporation Commission and the lease was being produced and operated by Gulf Oil Corporation as Operator under the plan of unitization. An owner of one-fourth of the remaining working interest in said lease desired to sell his interest and Fred Morgan purchased the interest and offered it to the Gaillards. The Gaillards accepted the offer, and purchased the interest in December, 1959. The owner of the remaining one-fourth interest in said lease also decided to sell his interest and through Fred Morgan this interest was also purchased by the Gaillards.

In December, 1961, the petitioners also purchased interests in two other leases in Pottawatomie County, Okla-

homa, known as the "Lingerfelt" and "Tiffin" leases, from Mr. Bob Field, an employee and son-in-law of Fred Morgan. Mr. Morgan acquiesced in the sale, but had no other connection with the transaction (R. 73, 164-165, 181-182, 232, 235-236).

Subsequent to the purchase of the interests in the James lease, in December 1959, and beginning in June, 1960, Fred Morgan presented to the petitioners a series of investments. At the trial of this matter, the respondent stipulated "that Fred Morgan made numerous trips to California from 1959 to 1963, and that on all these occasions Fred Morgan and these plaintiffs discussed the business that is the subject of this litigation, or parts of it. I believe also, that part of the stipulation is that they also, on numerous occasions, on many, many occasions discussed part of these deals over the telephone. That Fred Morgan sent volumes of mail to the plaintiffs and a little correspondence, a small amount, was sent back by plaintiffs to Fred Morgan" (R. 87-88). Such discussions resulted in a series of transactions in which Fred Morgan sold to petitioners certain interests in oil and gas leases owned by Fred Morgan on property in the states of Oklahoma, Texas, Nebraska and Colorado (R. 666-69, 73).

The transactions followed a common procedure in that after presenting the "deals" to the petitioners in California, Fred Morgan, from Oklahoma City, had letter agreements offering to sell interests in said oil and gas leases prepared and mailed to the petitioners in California, where they were executed and returned to Fred Morgan in Oklahoma City (R. 86). In all but one case (where there was an expiring lease and no assignment was given), Mr. Morgan,

within a short time, mailed his assignment of the interest involved to the petitioners in California and proceeded with the drilling of the well or wells as provided for in the letter agreements (R. 238).

The letter agreements (Joint Exhibits 1 through 8, R. 149-157) followed a similar pattern in that they were written to confirm the understanding of Fred Morgan to sell and the petitioners to buy an undivided interest in certain oil and gas leases with a well to be drilled on said lease or leases by Mr. Morgan. Payment was to be based upon either a stated total sum or upon a price per foot drilled. Petitioners were to pay in addition for completing the well or wells if they produced oil and gas.

After drilling the well or wells, Mr. Morgan prepared or caused to be prepared in Oklahoma City invoices for the contracted amount for the interest involved and the drilling of the well prescribed in the agreements and for subsequent costs of completing and operating said wells where capable of producing oil or gas. These invoices were mailed to the petitioners in California where the petitioners wrote checks in payment thereof which were mailed to said Fred Morgan in Oklahoma City, until February 1963, when petitioners refused to make further payments (R. 86, 240).

Fred Morgan did not apply for nor secure a permit from the California Commissioner of Securities for any of the interests in oil and gas leases which he sold to the petitioners (R. 254).

On April 2, 1963 the petitioners learned from the California Commissioner of Corporations that Fred Morgan had failed to obtain a permit for the sale of various securities

purchased by the petitioners, said securities being the interests in oil and gas leases offered by Fred Morgan commencing in June, 1960. The petitioners elected to declare such securities purchased from Fred Morgan, null and void and to rescind the sale of such securities and they tendered such securities and interests to Fred Morgan (R. 18, 991-92).

This suit was filed by the petitioners to recover the sums paid by them for the purchase of all of the above described securities, except interests in the James, Lingerfelt and Tiffin leases, which were not registered in California in violation of that state's Corporate Securities Act, less the sums received by them from such properties, the total sum claimed by petitioners being $181,806.31 and interest (R. 3-26).

The District Court rendered its decision against the petitioners in the following language in applicable part:

> "* * *: There is no question in my mind this is not only the law but it is the right thing in this case. If these people had come in and set the whole deal aside, the James lease, the Lingerfelt lease and the Tiffin lease in Pottawatomie county and put it back in status quo, this Court can't see any justice at all in permitting the parties to take advantage of the Act favorable to them and still retaining the benefits under transactions similar to the ones they seek to rescind. I just can't see any soundness in it under the theory that one who seeks equity must do equity, and therefore, I conclude without any hesistancy that these plaintiffs cannot prevail, notwithstanding the Blue Sky Law of California, and I find that law should not be enforced here because there is no comparable substantive statute law in Oklahoma, and that the California Securi-

ties Blue Sky Law is contrary to public policy in Oklahoma, and therefore this is one of those cases where the rule of comity should not be used or exercised.

"* * * there is one further theory under which relief could and should be denied these plaintiffs, and that is, following the law as set down in Robbins v. Pacific Eastern Corporation, and particularly with reference to the place of the performance of the contract. These wells were to be drilled in Oklahoma. It is true he got his letter agreement out there, signed it and returned it, but all the work to be performed was to be here in Oklahoma, and under that theory we are supposed to give validity to the contract if we can, and not place a construction on it that would make it invalid, and especially under that case this rule of interpretation must be applied by the courts. * * * It is particularly applicable in the present case where the plaintiffs and other stockholders got exactly what they bargained for where no fraud or imposition has been proved and where they are now trying to recoup their loss by a strained and technical construction of the contract which turned out to be a bad bargain. Oklahoma being the place of the performance of the contract the Oklahoma law should be applied under the doctrine of lex loci solitiones" (R. 122-124).

The Court of Appeals below affirmed the District Court holding that in view of the difference accorded by California and Oklahoma to oil and gas transactions, like those of the case at bar, "it does appear that application of California law to void the letter agreements and assignments would violate a deep-rooted tradition of the common weal in Oklahoma" (Appendix B, p. xi).

REASONS FOR GRANTING THE WRIT

1. The decision of the court below recognizes that the Oklahoma Supreme Court has held that for a law of a sister state to fail of enforcement in Oklahoma on the ground that it is contrary to the public policy of the forum, such law must "violate some fundamental principal of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." *Holder* v. *Holder*, 384 P.2d 663 at page 664 (Okla. 1963). The decision of the court below applies this rule by holding that as Oklahoma's Blue Sky Law excludes interests in oil and gas leases from the definition of a "security" (see 71 O.S. 1961 § 2(1), Appendix A), the enforcement in Oklahoma of the provisions of the California Blue Sky Law, which provisions do regulate oil and gas transactions (see Cal. Corp. Code § 25008, Appendix A), "would violate a deep-rooted tradition of the common weal in Oklahoma" and is, therefore, contrary to the public policy of Oklahoma (Appendix B, p. xi).

Petitioners herein submit that the court below incorrectly applied the above stated rule relative to enforcement of a sister state's law.

Both Oklahoma and California have extensive Blue Sky Laws. The public policy behind these laws, as well as all securities laws, is a recognition that the general public may by personal inspection and comparison determine the quality of the product and the reasonableness of the price of automobiles or appliances but that a worthless security may to all appearances be identical to a sound security. The basic purpose of the securities laws of both California and Oklahoma is to provide truth in securities to protect investors against misrepresentation, manipulation, and

other fraudulent acts and practices in the purchase and sale of securities. Such laws may differ in detail as to the number or types of exemptions or exclusions, or in their definition of a security, but the public policy to regulate the sale and issuance of securities remains the same.

Both states provide this protection to investors by requiring the disclosure of basic facts concerning the security itself, the issuer and his financial background and present status, the use to which the money received will be put and other relevant information by registration of the security before offer or sale. If a seller seeks purchasers of securities in either state, he submits to the regulation of the securities law of such state. It is difficult to perceive how the enforcement of the securities law of California, which defines the sale of an oil and gas interest as a security subject to regulation, where the sale is *actually made* in California, against the seller in Oklahoma, the state of his residence, is against the public good of the forum state. Fred Morgan of his own volition placed himself under the California securities law by the sale of securities in that state. Is it the "deep-rooted tradition of the common weal" of the citizens of Oklahoma to aid its citizens in violating the law of a sister state by providing an inviolate sanctuary to which they may return? This is the effect of the holding of the lower court. It is not the effect which is reached in *Holder, supra,* where the Supreme Court of Oklahoma found that the public policy of a state to permit maintenance by one spouse of a suit against the other to recover damages for personal injuries does not require or authorize the courts of the state to ignore foreign law affecting substantive rights where such law is different from that of the forum which does not permit an action for personal injuries between spouses.

There is a necessity for this Court to resolve the conflict between the Court of Appeals and the Supreme Court of Oklahoma in this matter and to restore uniformity between these two courts.

Further, the question involved assumes importance since not only will other litigants in the securities field be involved, but any litigant involved in interstate transactions or travel will be affected if the law of the two or more states involved are conflicting.

Petitioners have found no cases where there has been a denial of the enforcement of a sister state's Blue Sky Law on the ground that such enforcement would violate the public policy of the forum. In this connection, Mr. Louis Loss has stated:

> "The Courts likewise show no inclination in the Blue Sky field to apply the doctrine that a foreign cause of action will not be enforced if it is 'contrary to the strong public policy of the forum.' Two scholars of the conflict of laws who have recently examined this doctrine say that it has been applied generally in very few cases other than those which can be rationalized on the basis of orthodox choice of law considerations. At any rate, with regulatory statutes of one kind or another in every state but Delaware and Nevada, it is difficult to see any room for the operation of the doctrine in the Blue Sky Field." Loss, *The Conflict of Laws and the Blue Sky Laws,* 71 Harv. L. Rev. 209, 225 (1957).

Forty-eight of the fifty states regulate the sale and/or issuance of securities in varying respects. In this era of rapid transportation and communication, if the state regulatory schemes are to be effective, they must not be denied enforcement in a sister state on the grounds that particular

provisions of the statute are in conflict with the forum's public policy.

2. Prior to 1958, the provisions of the Judicial Code implementing the Full Faith and Credit Clause only provided for such effect to be given records and judicial proceedings, 28 U.S.C.A. § 1738 (Appendix A). However, in 1948, an amendment to Section 1738 provided that public acts were to be given the same effect and that statute, in applicable part, now reads as follows:

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in courts in such State, Territory or Possession from which they are taken."

This Court, in *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, 437 (1943), pointed out that judgments and statutes of other states for which judicial recognition have been sought were at that time (1943) on a different footing; and stated that Congress has provided that judgments "shall have full faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

Petitioners submit that this difference between judgments and statutes of other states was removed by the 1948 amendment to § 1738, *supra*, which gave to public acts the same extra-state effect given to judgments.

This Court has not ruled on the effect of such amendment. Such amendment purports to give the same effect to the public acts of the various states as is now given to final judgments of such states. If such amendment does give this

effect to public acts of sister states it is a matter of major legal significance which should be determined by this Court.

3. If, regardless of the 1948 amendment to Section 1738 (28 U.S.C.A. § 1738, Appendix A), public policy of the forum state is still considered by this Court to be grounds for the denial of the enforcement of the pubic acts of a sister state, the public policy of Oklahoma as found below is not of such force to override the stronger governmental interest of California or the principle of unity set forth in the Full Faith and Credit Clause.

This Court, in *Hughes* v. *Fetter,* 341 U.S. 609 (1951), held unconstitutional a statute of Wisconsin which excluded the Wisconsin courts from entertaining suits brought under the wrongful death acts of other states. Although the opinion in *Hughes* noted that the Court found it unnecessary in deciding the appeal to rely on the 1948 amendment to 28 U.S.C.A. § 1738, *supra,* and recognized that full faith and credit did not automatically compel a forum state to subordinate its own policy to a conflicting public act of another state, it did state, at pp. 611-612:

> "* * * It is for this Court to choose in each case between the competing public policies involved. The clash of interests in cases of this type has usually been described as a conflict between the public policies of two or more states. The more basic conflict involved in the present appeal, however, is as follows: On the one hand is the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states; on the other hand is the policy of Wisconsin, as interpreted by its highest court, against permitting

Wisconsin courts to entertain this wrongful death action.

"We hold that Wisconsin's policy must give way. That state has no real feeling of antagonism against wrongful death suits in general. * * *"

In a footnote to its opinion, the Court stated:

"It may well be that the wrongful death acts of Wisconsin and Illinois contain different provisions in regard to such matters as maximum recovery and disposition of the proceeds of suit. Such differences, however, are generally considered unimportant." At p. 612, ftn. 11.

In view of the above quoted language from *Hughes*, petitioners submit that the case at bar presents several important legal questions which should be decided by this Court. Oklahoma, the forum state herein, has a comprehensive Blue Sky Law, 71 O.S. 1961 § 1, *et seq.*, although as previously noted, its provisions do exclude oil and gas transactions from the definition of a security. As Oklahoma has adopted a statutory scheme for the regulation of securities, it is clear that such state has "no real feeling of antagonism against" security actions in general. It should be decided whether the differences in the type of exemptions and in the definition of a security contained in any particular state's Blue Sky Law are important as allegedly expressing under the circumstances herein, the public policy of a state, or whether such differences are to be considered unimportant in view of the "strong unifying principal embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each state of the obligations or rights created or recognized by the statutes of sister states."

Further, if one of the "competing public policies involved" must be chosen in deciding which state's law is to control, it must be the policy of the state having the most substantial contacts with or the greatest governmental interest in the activity in question." *Alaska Packers Ass'n* v. *Industrial Accident Com'n*, 294 U.S. 532 (1935).

In the case at bar, the facts establish that respondent's decedent offered, sold and delivered to the petitioners in California certificates of interest in oil and gas leases located in the States of Oklahoma, Nebraska, Colorado and Texas. It is the sale of these certificates of interest, defined by the California Corporation Code, § 25008 (Appendix A), as securities, and required to be registered, which gives rise under the California law to petitioners' causes of action. Thus, the question to regulate such sales within its borders or whether it is Oklahoma's policy to encourage such oil and gas transactions that is to prevail herein. Petitioners believe that as the sale of such securities occurred within the State of California, to citizens of that state, the policy of California should prevail.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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November, 1967

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. Article IV, Section 1 of the Constitution of the United States of America:

"Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

II. Section 1738 of the Judicial Code and Judiciary, 62 Stat. 947, 28 U.S.C. 1738:

"The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

III. Sections 25,003, 25,008, 25,500 and 26,100 of the Corporate Securities Law of the Corporations Code of California, Deering's California Codes:

"25003. 'Company' includes all of the following:

"(a) All domestic and foreign private corporations, associations, syndicates, joint stock companies, and partnerships of every kind.

"(b) Trustees as defined in Section 25004.

"(c) Individuals selling, offering for sale, negotiating for the sale of, or taking subscriptions for, any security of their own issue."

"25008. 'Security' includes all of the following:

"(a) Any stock, including treasury stock; any certificate of interest or participation; any certificate of interest in a profit-sharing agreement; any certificate of interest in an oil, gas, or mining title or lease; any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings.

"(b) Any bond; any debenture; any collateral trust certificate; any note; any evidence of indebtedness, whether interest-bearing or not.

"(c) Any guarantee of a security.

"(d) Any certificate of deposit for a security."

"25500. No company shall sell any security of its own issue, except upon a sale for a delinquent assessment against the security made in accordance with the laws of this State, or offer for sale, negotiate for the sale of, or take subscriptions for any such security, until it has first applied for and secured from the commissioner a permit authorizing it so to do.

"The provisions of this section do not apply to the issue or reclassification of shares of stock in any of the following transactions:

"(a) The issue of shares in a stock split, as defined in Section 115.1;

"(b) The issue of shares in a reverse stock split, as defined in Section 115.2;

"(c) The reclassification of outstanding shares having par value into an equal number of shares of a different par value or into an equal number of shares without par value; or

"(d) The reclassification of outstanding shares without par value into an equal number of shares having par value; provided that, in each such case, (i) such issue or reclassification of shares does not change the proportionate interest of the holders of shares outstanding immediately prior thereto; (ii) no change is made in the rights, preferences, privileges or restrictions on outstanding shares other than such changes as necessarily result from such stock split, reverse stock split or reclassification of shares; (iii) the corporation has only one class of shares outstanding; and (iv) the shares to be outstanding immediately after such stock split, reverse stock split or reclassification will have a par value or, in the case of shares without par value, a stated value of not less than one dollar ($1) per share."

"26100. Every security of its own issue sold or issued by any company without a permit of the commissioner then in effect authorizing the issuance or sale of the security is void. Every security of its own issue sold or issued by a company with the authorization of the commissioner but which has been sold or issued in non-conformity with any provision in the permit authorizing the issuance or sale of the security is void."

IV. Section 2(l) of the Oklahoma Securities Act, Title 71, Oklahoma Statutes 1961, Section 2(l):

"(1) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate;

certificate of deposit for a security; or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or any endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period, or any oil, gas, or mining title or lease or any certificate of interest or participation, or conveyance in any form, of an interest therein, or in payments out of production under such a title or lease."

APPENDIX B

OPINIONS OF COURTS BELOW

I. Opinion of the United States District Court for the Western District of Oklahoma delivered orally on November 30, 1965 (R. pp. 122-124):

Gentlemen, the evidence here today has been helpful, and I appreciate especially the briefs the parties have furnished me and I have studied them diligently. I spent nearly all of Thanksgiving week on them, and had spent considerable time prior to that, especially in connection with the pretrial of the case.

This is not the easiest type of case, and I have concluded after hearing all this evidence, reading the depositions and examining all the exhibits that there was no actual fraud practiced here by the deceased Morgan against these plaintiffs. I think these intelligent, grown people, went into the matter with their eyes open.

There being no fraud, it brings it down to the point of a determination of the comity law in force, the California Securities Act, which differs from the Act in Oklahoma, and here is the way I see it: There is no question in my mind this is not only the law but it is the right thing in this case. If these people had come in and set the whole deal aside, the James lease, the Lingerfelt lease and the Tiffin lease in Pottawatomie county and put it back in status quo, this Court can't see any justice at all in permitting the parties to take advantage of the Act favorable to them and still retaining the benefits under transactions similar to the ones they seek to rescind. I just can't see any soundness in it under the theory that one who seeks equity must do equity, and therefore, I conclude without any hesitancy that these plaintiffs cannot prevail, notwithstanding the Blue Sky law of California, and

I find that law should not be enforced here because there is no comparable substantive statute law in Oklahoma, and that the California Securities Blue Sky law is contrary to public policy in Oklahoma, and therefore this is one of those cases where the rule of comity should not be used or exercised.

I think at the same time that the defendant has failed to sustain his burden of proof in connection with his cross action in so far as Invoice No. 6-115 is concerned. That is $3,987.14. There was no authorization for that expense to be incurred, and while it may have been necessary I didn't find it necessary for that part of it, and for the balance of the defendant's claim, it is as stipulated and agreed among the parties, and I appreciate that.

There are some other bothersome points in the case, and I want the effective date of my order to be the date it is signed and filed with the clerk.

The question of limitations, I think, is a closed question. In view of the decision of the United States Supreme Court in Huntington versus Attrill, I don't find it is penal and therefore the action is not barred, and there is one further theory under which relief could and should be denied these plaintiffs, and that is, following the law as set down in Robbins vs. Pacific Eastern Corporation, and particularly with reference to the place of the performance of the contract. These wells were to be drilled in Oklahoma. It is true he got his letter agreement out there, signed it and returned it, but all the work to be performed was to be here in Oklahoma, and under that theory we are supposed to give validity to a contract if we can, and not place a construction on it that would make it invalid, and especially under that case this rule of interpretation must be applied by the courts. It is particularly applicable in the present case where the plaintiffs and other stockholders got exactly what they bargained for

where no fraud or imposition has been proved and where they are not *(sic)* trying to recoup their loss by a strained and technical construction of the contract which turned out to be a bad bargain. Oklahoma being the place of the performance of the contract the Oklahoma law should be applied under the doctrine of lex loci solitiones.

The attorneys will prepare the finding of facts and conclusions of law.

II. Opinion of the United States Court of Appeals, Tenth Circuit, filed July 21, 1967, but unreported on date of filing (R. of Court of Appeals p. 4):

The plaintiff-appellants, residents of California, brought this action in the United States District Court for the Western District of Oklahoma, seeking to rescind certain agreements and to recover approximately $180,000 from the defendant-appellee as administratrix of the estate of her deceased husband, Fred Morgan. The administratrix is a resident of Oklahoma, as was her husband before his death. The appellee counterclaimed for expenses which appellants had declined to pay, and obtained judgment therefor.

The trial court found for the appellee, and appellants took this appeal.

The record shows that the appellants and the decedent entered into a number of contracts wherein the decedent assigned to appellants fractional interests in certain oil and gas leases in Oklahoma, Texas, Nebraska, and Colorado, and wherein the appellants agreed to contribute their pro rata share of expenses for drilling wells on the leaseholds. The decedent supervised the drilling, but all the wildcat wells drilled were either dry or fell short of commercial production. Appellants filed suit in the District Court in Oklahoma to rescind the letter agreements and assignments and recover all moneys paid.

As one ground for rescission the appellants alleged that they were fraudulently induced by the decedent to enter into the agreements. However there is substantial evidence in the record to support the trial court's determination that the decedent practiced no fraud on the appellants.

The appellants next assert that the agreements and assignments are voidable at their option because, under California law, the contracts are securities and the law of California permits the buyer of such securities to void the sale if the seller has not registered the security with the state and has not received approval to sell. Decedent did not register the agreements and assignments in California.

The trial court refused to apply the law of California, and concluded, inter alia, that such state regulation of oil and gas transactions like those in the case at bar is contrary to the public policy of Oklahoma. The trial court made no express finding or conclusion that the agreements were securities under California law, but assuming that they are, it is clear that Oklahoma does not consider oil and gas interests as securities and expressly excludes such interests from its securities act. *Compare* Cal. Corp. Code § 25008[1] *with* Okla. Stat. Ann. tit. 71, § 2(1) (1965).[2] The former chairman of the Oklahoma Securities Commission

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[1] Cal. Corp. Code § 25008: "'Security' includes all of the following: (a) Any stock, including treasury stock; any certificate of interest or participation; any certificate of interest in a profit-sharing agreement; any certificate of interest in an oil, gas, or mining title or lease; any transferable share, investment contract, or beneficial interest in title to property, profits, or earnings. . . ."

[2] Okla. Stat. Ann. tit. 71, § 2(1) (1965): ". . . 'Security' does not include . . . any oil, gas, or mining title or lease or any certificate of interest or participation, or conveyance in any form, of an interest therein, or in payments out of production under such a title or lease."

testified that regulation of oil and gas transactions as securities was contrary to the public policy of Oklahoma.

The policy of Oklahoma is not passive, neutral, or unarticulated. The contrariety with California law is expressed in clear statutory language. Appellants argue that the difference between the California and the Oklahoma statutes is an unimportant detail because the basic policy of each state is the regulation of securities. Regulation of securities is undoubtedly the basic policy of the Oklahoma Securities Act, but oil and gas transactions are not securities in Oklahoma. Each state views the letter agreements and assignments in a different context. In California they are securities subject to comprehensive regulatory and remedial legislation unknown to the common law. In Oklahoma the agreements and assignments are regular contracts subject to the general rules of the common law. This difference in treatment or characterization is important.

Appellants argue that the trial court's refusal to apply the law of California offends the full faith and credit clause of the Constitution. In a variety of legal and factual contexts the United States Supreme Court has declared that the command of the full faith and credit clause is not absolute, for the clause does not compel the forum state to subordinate its public policy to the conflicting policy of a sister state. See Carroll v. Lanza, 349 U.S. 408; Watson v. Employers Liability Assur. Corp., 348 U.S. 66; Hughes v. Fetter, 341 U.S. 609; Griffin v. McCoach, 313 U.S. 498; Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493. These cases considered together establish that the legitimate interests of the forum state may outweigh the unifying principle embodied in the full faith and credit clause. The Supreme Court in Watson v. Employers Liability Assur. Corp., supra, said:

"That clause does not automatically compel a state to subordinate its own contract laws to the laws of another state in which a contract happens to have been formally executed. Where, as here, a contract affects the people of several states, each may have interests that leave it free to enforce its own contract policies."

We think the interests and policies of California and Oklahoma are antagonistic. California classifies oil and gas interests as securities and gives the buyer of such a security an option to void the sale if the seller has not registered with the state and received approval to sell, an option unknown to the common law. Oklahoma does not classify oil and gas transactions as securities and recognizes no buyer's option to void the sale for the seller's failure to register with the state and receive approval to sell. Registration and approval are alien to the public policy of Oklahoma. Relying on California law, the appellants seek, from a federal court sitting in Oklahoma, a remedy that Oklahoma withholds from its own residents. See Hartness v. Aldens, Inc., 301 F.2d 228 (7th Cir.).

Oklahoma has important contacts with this litigation. Regardless of the classification of the agreements and assignments under California law, the agreements provided that the decedent would drill oil wells on leaseholds in Oklahoma and states other than California. The decedent was a resident of Oklahoma, and Oklahoma has an interest that legitimate contracts made by its residents with residents of other states are not rendered void in Oklahoma courts by enforcing the law of a sister state, whose statutes regard oil and gas transactions in an entirely different context than the law of Oklahoma.

The trial court applied the Oklahoma conflict of laws doctrine, and this is not questioned on appeal. There seems to be no case decided by the Oklahoma

Supreme Court that is quite like the case at bar. In Holder v. Holder, 384 P.2d 663 (Okla. 1963), the Oklahoma court recognized that Oklahoma courts would not apply the law of a sister state if it were contrary to the public policy of Oklahoma. The court in Holder quoted Judge Cardozo's familiar statement in Loucks v. Standard Oil Co., 120 N.E. 198 (N.Y. 1918), that to fail of enforcement in the forum state, the law of the sister state must "violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." It does not appear that the California law allowing a buyer of an oil and gas security to void the sale for the seller's failure to register and receive sale approval from the state violates a fundamental principle of justice or prevalent conception of good morals. In view of the difference accorded by California and Oklahoma to oil and gas transactions like those in the case at bar, it does appear that application of California law to void the letter agreements and assignments would violate a deep-rooted tradition of the common weal in Oklahoma. See also Hartness v. Aldens, Inc., 301 F.2d 228 (7th Cir.).

AFFIRMED.

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 848

ERNEST GAILLARD, JR., and MIGNONNE NASH GAILLARD,
Petitioners,

VERSUS

FREDDIE MORGAN FIELD, Administratrix of the Estate of Fred Morgan, Deceased,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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December, 1967

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0030

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Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

This brief is in response to Plaintiffs' Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, and requests this Court to deny the writ.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Western District of Oklahoma, delivered orally November 30, 1965 (R. pp. 122-124), printed in Appendix B of Plaintiffs' Petition for Writ of Certiorari, page v, is unreported as of the date of filing this brief. The opinion of the Court of Appeals (R. of Court of Appeals, p. 4) printed in Appendix B of Plaintiffs' Petition for Writ of Certiorari at page vii is unreported as of the date of filing this brief.

QUESTIONS PRESENTED

Does the full faith and credit clause of the United States Constitution set aside the long standing and well established law of comity?

Can a California citizen enforce a California statute which invokes a forfeiture in an Oklahoma court when there is no comparable Federal or Oklahoma statute, and where the California statute and its forfeiture clause are contrary to the public policy of Oklahoma.

STATEMENT OF THE CASE

In this case the Plaintiffs entered into various private transactions with Fred Morgan, who died pending the litigation. Certain of these transactions were profitable (Item 1, Appendix p. i) to the Plaintiffs, and certain ones were unprofitable. The Plaintiffs in their action wanted to retain all of the benefits of the profitable transactions but have all their money returned on the unprofitable ventures after they had had an opportunity for those ventures also to prove profitable.

Plaintiffs' plea was on the basis that the unprofitable ventures were subject to the technical forfeiture clause of the California Securities Statute. The Federal Securities Act does not regulate private transactions such as the ones between Plaintiffs and Defendant, and in Oklahoma the Securities Act expressly provides that oil and gas transactions are not securities. Also, in Oklahoma, according to the uncontroverted evidence in the case, regulations of oil and gas transactions similar to the ones here before the Court, are contrary to public policy. In this regard, the

Plaintiffs put on Paul Duncan, a prominent lawyer in Oklahoma, who had formerly been head of the Oklahoma Securities Commission. He testified that there was a public outcry in Oklahoma against the regulation of this type of oil and gas transaction as a security, and this testimony and evidence stands uncontradicted in the record. Mr. Duncan's testimony in this regard is set out herein under the heading "Argument and Authorities."

Mr. Morgan had become personally acquainted with the Plaintiffs while undergoing medical treatment in La Jolla, California. As the result of this personal acquaintance, the Plaintiffs entered into a series of transactions with Mr. Morgan.

The first was an interest acquired in the James lease in Lincoln County, Oklahoma. In addition, Mr. Morgan was instrumental through a son-in-law and employee in the Plaintiffs acquiring the Tiffin and Lingerfelt leases in Pottawatomie County, Oklahoma, which leases were also profitable. In this regard, see the opinion of the trial court which appears at page v to the Appendix of Plaintiffs' Brief, where the court refers to this fact. The James lease resulted in oil sales totalling $151,085 in return for cost of $71,500 as of the time of trial, and the property was still producing. (See Item 1 Appendix hereto, p. i.)

With regard to these transactions, the Plaintiffs desired to keep all of their profits and all of the benefits thereof, but in addition to such transaction the Plaintiffs engaged in numerous transactions with the Defendant wherein wildcat and semi-wildcat wells were drilled. These transactions were negotiated by numerous telephone and mail com-

munications between Mr. Morgan in Oklahoma and the Plaintiffs in California, by some personal contacts on the part of Mr. Morgan in California, and also the plaintiff, Dr. Ernest Gaillard, made four trips to Oklahoma (R. 88, see page 5 hereof). The culmination of each of such transactions was embodied in a simple one-page letter agreement prepared by Mr. Morgan in Oklahoma, sent through the mail to Dr. Gaillard in California, who would accept the letter agreement and send it back.

The first of the letter agreements, which is typical of the group, is set out in the Appendix hereto as Item 2, at pages ii-iii. As will be seen from a cursory reading of the letter agreement, it is a simple contract providing for the drilling of the No. 1 Throckmorton well in Kingfisher County, Oklahoma, and in it Mr. Morgan agrees on a turn-key basis to drill the well and assign the Plaintiffs a 1/8th interest in the lease. The Plaintiffs took the position in the court below that this was a security because it calls for an assignment of the lease to be made to the Plaintiffs. The trial court ruled that this contract should be interpreted under the Oklahoma law, not under the California law, and that, therefore, the California Securities Law did not apply (See the opinion of the trial court reported at page v, in Appendix B to Plaintiffs' Petition for Writ of Certiorari). The well called for in this lease was, of course, a wildcat from which tremendous profits might have been made. Various of the other letter agreements called for similar wells, some of which produced some oil, but were not profitable.

The position of the Defendant (the Administratrix of the Estate of Fred Morgan) in the trial court was that these

agreements were to be performed in Oklahoma and outside of the State of California, and that, therefore, they should be interpreted in accord with their place of performance, and further that even if they were California Securities that, as a matter of comity, the Plaintiffs could not come into the Oklahoma court and assert a local foreign law which had no counterpart in a Federal Statute, or in the Oklahoma statutory law or substantive law, and which was contrary to the public policy of Oklahoma. As will be seen from the trial court's opinion as it appeared in the Appendix B to the Plaintiffs' Petition for Writ of Certiorari, *supra,* the trial court held for the Defendant on all of these counts.

The Plaintiffs contend in their Petition for Writ of Certiorari that sales of securities were "actually made in California" (page 10) but the trial court did not so find and the facts do not accord to this interpretation. The facts in this regard are contained in a simple trial stipulation (R. 87-88) which was to the following effect:

> "The Court: Yes. We will take a recess and if counsel desire to talk to me I will be in chambers.
>
> "(Hereupon a recess was called, after which court convened, all appearance as heretofore, and further proceedings had as follows, the last preceding witness resuming the stand.)
>
> "Mr. Verity: For the record and in order to simplify this litigation, the defendant will enter into a stipulation that Fred Morgan made numerous trips to California from 1959 to 1963, and that on all these occasions Fred Morgan and this plaintiff discussed the business that is the subject of this litigation, or parts of it. I believe also, that part of the stipulation is they also on

numerous occasions, on many, many, occasions discussed part of these deals over the telephone. That Fred Morgan sent volumes of mail to the plaintiff and a little correspondence, a small amount, was sent back by the plaintiff to Fred Morgan. Also, that the plaintiff was in Oklahoma on four occasions. I think counsel wants to introduce some testimony on that. We further stipulate that they met in Phoenix, Arizona at one time and discussed parts of this matter. Does that cover it?

"Mr. Irvine: I think so."

It would be more correct to say the transactions were interstate, interstate telephone calls, interstate mail, and most particularly the complained of contracts were prepared in Oklahoma, mailed to the Plaintiffs in California, there signed and mailed back to the Defendant in Oklahoma. The trial court determined that Oklahoma being the place of performance, the Oklahoma law should be applied (Appendix B to Plaintiffs' Petition for Writ of Certiorari, p. vii).

SUMMARY OF ARGUMENT

In its argument contained under the heading "Argument and Authorities," the Defendant will show to the Court that the Plaintiffs' application for a writ of certiorari should be denied, for the reason that the full faith and credit clause of the Constitution does not set aside the law of comity; that in this case where there was no violation of Federal Statutes that a transaction that principally took place in interstate commerce cannot be forfeited to the advantage of the Plaintiffs under the technicalities of a local California Statute which is contrary to the uncontradicted public policy of Oklahoma; that the 1948 amendment

to Section 1738 of 28 U.S.C.A., did not change the law of comity, and that there is no conflict between the opinion of the Circuit Court of Appeals and the Oklahoma case of *Holder* v. *Holder;* that the Plaintiffs were not entitled to recover as a matter of equity or as a matter of law, and that Plaintiffs' Petition for a Writ of Certiorari should be denied.

ARGUMENT AND AUTHORITIES

Proposition No. I

The full faith and credit clause of the Constitution does not set aside the law of comity which denies Plaintiffs the right to enforce the local California Securities Statute in this case where the following conditions prevail:

A. Where there is no comparable substantive or statute law.

B. Where such California local law is contrary to public policy or would work an unjust hardship upon a citizen of the Oklahoma jurisdiction.

The law of comity which has arisen under the full faith and credit clause of the United States Constitution has some very definite limitations in that the law of comity whereby a court will enforce the laws of a foreign country or state will not be extended if there is no comparable local law or statute or where the foreign local law to be enforced would be contrary to the public policy of the jurisdiction where its enforcement is sought; or where it would work an unjust hardship upon one of the citizens of the jurisdiction where the enforcement is sought. In addition thereto, the rule of comity between courts will not be enforced against a citizen of the jurisdiction where the enforcement is sought if the local foreign law is penal in nature.

If either A or B out of the above proposition obtain, then the plaintiffs are not entitled to recover against Fred Morgan in the courts of Oklahoma, the place of his residence. The Oklahoma court very early addressed itself to this point in the case of *Klein* v. *Keller*, 42 Okla. 592, 141 Pac. 1117. We quote from the syllabus propounded by the Court in that case:

> "1. CONTRACTS (§ 101*)—Validity—What Law Governs
> "The question whether a contract is legal or illegal is judged by the law on the subject in the state or country in which the contract is made; the general rule being that 'a contract good where made is good everywhere, and a contract invalid where made is invalid everywhere.' The exceptions to the general rule are: '(1) Where the contract in question is contrary to good morals; (2) where the state of the forum or its citizens would be injured through the enforcement by its courts of the contracts of the kind in question; (3) where the contract violates the positive legislation of the state of the forum, that is, is contrary to its Constitution or statutes; (4) where the contract violates the public policy of the state of the forum.'
>
> "(Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 455-460; Dec. Dig. § 101*)"

There is a legion of authority to the effect that comity is withheld under the circumstances of A and B. See *London Terrace* v. *McAllister*, Tex. Civ. App., 179 S.W.2d 515; *Thorn* v. *Machen*, 58 Cal.App.2d 76, 136 P.2d 116; *In re Shun T. Takahoshi's Estate*, 113 Mont. 490, 129 Pac. 217; *Jackson* v. *Shuttleworth*, 42 Ill.App.2d 257, 192 N.E.2d 217; *Klaxon* v. *Stentor Electric Manufacturing Company*, 313 U.S. 487, 85 L.Ed. 1477, 61 S.Ct. 1020; *Griffin* v. *McCoach*, 313 U.S. 498, 85 L.Ed. 1481, 61 S.Ct. 1023, 134 A.L.R. 1462.

We submit that in the case at bar each of these limitations does obtain. Certainly, there is no statute or substantive law in Oklahoma which would hold that, if an oil and gas transaction similar to the one complained of here by the plaintiffs is entered into, that it is void, or that one party could retrieve their money, merely because the leases assigned after the drilling and development of the properties were not registered with a Securities Commission and a license issued for a sale thereof. As provided in 71 O.S.A. § 2(1) as quoted in Appendix A of petitioners' brief at pp. iii and iv, such transactions are specifically exempted from Securities Regulation in Oklahoma, and therefore there not only is no comparable statute or substantive law in Oklahoma, but the law in Oklahoma is expressly contrary by statute to the California law. Certainly, there never was any common substantive law with regard to registration of securities, and the Oklahoma law and statute with regard to securities registration in no way has been infringed, nor do the Plaintiffs contend that it has been infringed.

The trial court made a finding (No. 10, R. 75) that it was contrary to the public policy of the State of Oklahoma (See Item 3, p. iv, Appendix hereto) to regulate oil and gas transactions. During the trial the Defendant offered evidence to this effect which was not objected to or countered by the Plaintiffs.

The Defendant offered the testimony of Paul Duncan, a prominent Oklahoma attorney, who was particularly qualified to express opinion upon the question of the public policy of Oklahoma with regard to securities matters because he had been appointed Trustee in Bankruptcy of the

Selected Investment matter, thereafter had a hand in the adoption of the present Oklahoma Securities Law and was the first Chairman of the Securities Commission constituted by such law. Also, as his testimony will show, he was Chairman of the Securities Commission at the time that an amendment was made in the law so as to provide that oil and gas transactions be excluded as "securities."

We quote from Mr. Duncan's testimony (R. 117) as follows:

"Q. Did this leave the Securities Commission any *problems* in regard to transactions in oil and gas industries in so far as the Securities Commission went? A. Yes. There were a number of things in the Act that were not quite like we would like to have had it, but the most head-aches we got in the securities business anywhere was the fact they had exempted oil and gas transactions but they had not excluded them, and for that reason the Act was interpreted by us in such a way to make it look like brokers and dealers would have to register under the Act.

"Q. *Was there any public outcry in regard to this?* A. *Very definitely. When that interpretation was given to it there was a great deal of it.*

"Q. As a result of this did the Oklahoma Securities Commission, through yourself as chairman or through its executive director make any request to the '61 legislature? A. Yes. Hugh Owens was the first *administer* appointed by the Commission and shortly after the Commission was formed we came to the conclusion this provision could not be enforced and should not be enforced and we therefore went to the legislative committee, as we knew that would be the one that would be interested in any changes in this Act and asked that they exclude oil and gas transactions and

actually gave the method by which we thought it could be done best, and then both Mr. Owens and myself appeared before the legislative committee and urged this amendment to the Act.

"Q. *Did other people join in that?* A. *Mr. Willis Baker's committee was interested in that also.*

"Q. Are you aware of whether they had made any recommendation immediately with regard to oil and gas transactions? A. Who actually made the recommendation I didn't know, although it was my understanding they had made such a recommendation.

"Q. Had the legislative council over a period of time, and actually prior to this being brought to public attention by the Selected Investments matter, had they actually been studying a revision of the Securities Act? A. Oh, yes.

"Q. Did they study it for four or five years prior to the recommendation of the 1959 law? A. I know at least in '57 they were working on it. I don't know before that date.

"Q. From your experience as an attorney and your relationship with the Oklahoma securities law, and public situation in Oklahoma, do you have an opinion with regard to whether or not there is a public policy in this state as to whether or not oil and gas transactions should be regulated as to securities? A. I have an opinion.

"Q. What is your opinion? A. They should not be regulated.

"Q. That is all." (Emphasis supplied.)

It actually had been the intent of the Legislature in adopting the initial law to exempt oil and gas transactions, which they did, but this left all developers and independent

operators under the regulation as "broker-dealers" dealing in securities for the reason that the initial enactment of the law did not *exclude* the transactions from being defined as a security. The amendment which the "public outcry" demanded, as well as the study that Mr. Duncan's Commission and Mr. Willis Baker's Committee (R. 117) had given to the matter very definitely established the fact that such transaction and any type of securities regulations with regard to them would violate "some deep rooted tradition of the common weal." This quoted standard of a definition for a public policy taken from page 10 of the Petition for Writ is taken from the case of *Loucks* v. *Standard Oil Company*, 224 N.Y. 99, 120 N.E. 198, and is a definition and standard with which we believe this testimony very positively shows conformance. To permit such transactions to be regulated in the manner that the California statute endeavors to do would put the Oklahoma oil industry in the greatest state of confusion. It would permit the second part of case B above and individuals like Dr. Gaillard and his wife to have the opportunity to participate in the drilling of wildcat wells and keep their participation if the wildcat proved productive, but to obtain their money back if it proved a dry hole. To Oklahoma, this is contrary to "fundamental principles of justice," it is contrary to Oklahoma's "prevalent conception of good morals." It is contrary to "deep-rooted tradition of the common weal" in Oklahoma, and it would work "an unjust hardship upon a" citizen of Oklahoma.

The law of comity is not set aside by the full faith and credit clause of the Constitution. This clause of the Constitution does not mean that in every instance where a plain-

tiff has a cause of action arising under a foreign local law that he is entitled to obtain relief against a citizen of the state of the forum.

The fact that the law of comity withholds relief on foreign local law, in the instances set out in parts A and B of this proposition, has long been an integral part of the law of comity in the United States. In the case of *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Wallace,* 223 U.S. 481, 56 L.Ed. 516, 32 S.Ct. 205, our Supreme Court set out the fact that public policy of the local forum obviated recovery on a foreign law, with the following language:

> "The real question, therefore, presented by this assignment of error, is whether a state court may enforce a right of action arising under an Act of Congress.
>
> "Statutes have no extraterritorial operation, and the courts of one government cannot enforce the penal laws of another. At one time there was some question both as to the duty and power to try civil cases arising solely under statutes of another state, but it is now recognized that the jurisdiction of the state courts extends to the hearing and determination of any civil and transitory cause of action created by a foreign statute, provided *it is not of a character opposed to the public policy of the state in which the suit is brought.*" (Emphasis ours.)

Again, the Supreme Court upheld that withholding judgment in a court on an action based on foreign law was not contrary to full faith and credit. In the case of *George A. Fowler* v. *S. Warren Lamson,* 164 U.S. 252, 41 L.Ed. 424, 17 S.Ct. 112. In this case, the Court addressed itself to the particular problem and refused to overrule the Illinois Supreme Court when it had refused to enforce a Kansas statute in its state. We quote from such opinion as follows:

> "The point actually decided by the Supreme Court of Illinois was, as shown by that opinion, that the Constitution and statutes of Kansas in relation to the liability of stockholders in an insolvent corporation, provide a special remedy for enforcing that liability, and that such remedy could only be pursued, *and that the courts of Illinois would not enforce a statutory liability under a Kansas statute providing for a special remedy against the stockholders.*" (Emphasis ours.)

It can be readily seen that this case is exactly comparable to the one here before the Court where the Plaintiffs would enforce the special rescission provision of the California statute.

We would also point out to the Court that the case of *Hughes* v. *Fetter,* 341 U.S. 609, 95 L.Ed. 1212, 71 S.Ct. 980, cited by the Petitioners is not ruling in the case here at bar and does not set aside the above cited cases for the reason that in *Hughes* v. *Fetter* the Wisconsin court had endeavored to determine that a Wisconsin statute provided for death claims arising within the State of Wisconsin but declared a public policy against allowing suits within the state on death claims from accidents arising under foreign statute. This does not say that Wisconsin if it sought to do so could not determine that there would be no actions either arising within or without the state on death claims. This Court held in the *Hughes* v. *Fetter* case that Wisconsin could not declare that they had a public policy that Wisconsin *death claims were proper but not Illinois death claims.* This is obviously not the situation here before the Court where Oklahoma has expressly provided that oil and gas transactions shall not be regulated as securities.

The Petitioners also endeavor to extend this case to the situation here before the Court on the contention that Oklahoma does not have a public policy against regulation of securities transactions, and that, therefore, it cannot have a public policy against including oil and gas transactions in the Securities Law. We submit that the distinction is imagined, and that Oklahoma is not precluded from its public policy with regard to non-regulation of oil and gas transactions as securities merely because it acknowledges that stocks and normal securities should be regulated by proper law. Oklahoma has the right to declare its public policy, and deepseated requirements of the Oklahoma public, and its extensive vested interest in the oil and gas industry in saying that these transactions and nothing with regard to them shall be considered a security. If they had endeavored to provide that they would be regulated in Oklahoma, but that foreign law could not be applied against Oklahoma oil operators, then it would be analogous to *Hughes* v. *Fetter.*

The amendment of the full faith and credit statute of the Federal Government cited in the Petition for Writ (p. 12) has not resulted in waiving aside the comity rules and placing foreign statutes over local statutes and in the same position of an adjudicated matter from a foreign jurisdiction. This is made manifestly clear in the case of *Virgil G. Carroll, et al.* v. *M. Lonza, d/b/a Lake Charles Electric Company,* 249 U.S. 408, 99 L.Ed. 1183, 75 S.Ct. 804. Here, after the enactment of the amendment, the Court again held that one state was not necessarily bound by a conflicting act in another state. In this case, a suit was brought in the Arkansas courts by a workman employed in Missouri under

the Missouri Workman's Compensation Act. Such act did not allow a public liability claim against a third party, and it was asserted as a bar to the action by the workman employed under the Missouri contract. In this case, this Court clearly showed that the 1948 amendment to 28 U.S.C. Section 1738, did not eliminate the restraints upon comity with the following language:

> "The court of appeals thought Magnolia Petroleum Company v. Hunt * * *, to be controlling. There, the employee having received a *final award* for compensation in the forum of the injury returned to his home state and sued to recover under its compensation act. We held that the latter suit was precluded by the full faith and credit clause. But here there was no final award under the Missouri Act. Under that act, the statutory payments apparently started automatically on receipt of notice of injury (Missouri statutes cited). While provision is made for an adjudication of disputes between an employee and his employer, no adjudication was sought or obtained here."

This Court continued later in the opinion with language that is definitely applicable to the question here at bar, as follows:

> "The court proceeded on the premise, repeated over and again in the cases, *that the full faith and credit clause does not require a state to substitute for its own statute, applicable to persons and events within it, the statute of another state reflecting a conflicting and opposed policy.* Id., 306 U.S. 502, 59 S.Ct. 633.
>
> "* * * The state of the forum also has interests to serve and to protect." (Emphasis supplied.)

The Court then pointed out that the case of *Hughes* v. *Fetter, supra,* was not applicable to the situation with the following language:

> "This is not a case like *Hughes* v. *Fetter,* 341 U.S. 609, 71 S. Ct. 980, 95 L.Ed. 1212, where the State of the forum seeks to exclude from its courts actions arising under a foreign statute. In that case, we held that Wisconsin could not refuse to entertain a wrongful death action under an Illinois statute for an injury occurring in Illinois, since we found no sufficient policy considerations to warrant such refusal. And see Broderick v. Rosner, 294 U.S. 629, 55 S. Ct. 589, 79 L. Ed. 1100. The present case is a much weaker one for application of the Full Faith and Credit Clause. Arkansas, the State of the forum, is not adopting any policy of hostility to the public Acts of Missouri. It is choosing to apply its own rule of law to give affirmative relief for an action arising within its borders."

The Court had a very similar case to the one here at bar in the case of *Hoopeston Tanning Company* v. *Cullen,* 318 U.S. 313, 87 L.Ed. 777, 63 S.Ct. 602, when the case was appealed from the Supreme Court of the State of New York. In this case the Hoopeston Tanning Company was arguing that the State of New York under its law and public policy could not regulate insurance on property within its state when the appellants were reciprocal insurance associations, whose attorneys in fact were located in Illinois and had a contract of insurance that was *completed* in Illinois. The Court very energetically held that New York did not have to apply Illinois law, but that its interest in its people and property could "be measured by highly realistic considerations such as the protection of the citizen insured or the protection of the state from the incidents of loss."

The Court then observed that the contract between the parties important as it was is *"ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction."* This is exactly applicable to our situation here before the Court. And the following language of the Court in that case could be applied *in toto*:

> "The intimacy of the relation of these insurance contracts to the state of New York becomes even more apparent when it is remembered that the property insured is in the state of New York. The states have long held great authority over property within their borders. A state may make flood control, quarantine, conservation and zoning regulations affecting property within its bounds. It is the source of law for the forms of conveyances, for the nature of covenants, future interests and easements, for the construction of wills, trusts, and mortgages, and for many other legal principles affecting property interests. *Contracts formally made in other states may remain subject to the law of the state of the situs of the property, particularly in respect to immovables.* There is no more reason to bar the state from authority over the insurance of the property within it than to exclude it from conrol of all the other property interests mentioned.
>
> * * * * * *
>
> "The Allgeyer and subsequent insurance cases have been recently considered in Griffin v. McCoash, supra, * * * as the analysis in those opinions clearly indicates, the Allgeyer line of decisions cannot be permitted to control cases such as this, *where the public policy of the state is clear*, the insured interest is located in the state, and there are many points of contact between the insurer and the property in the state." (Emphasis supplied.)

In the article "Full Faith and Credit to Statutes: The Defense of Public Policy" in 19 University of Chicago Law Review at page 342 *Hughes* v. *Fetter, supra,* is explained. The article points out "Due process no longer forbids a state from applying its own law unless it has no reasonable contact with the transaction, and, where such a reasonable contact exists, Full Faith and Credit does not compel a state to apply another's law in preference to its own. In other words, further experience with the subject has induced the court to withdraw almost entirely from the field of choice of law." Citing *Hoopeston Tanning Company* v. *Cullen, supra*; *Home Insurance Company* v. *Dick,* 281 U.S. 397, 74 L.Ed. 926, 50 S.Ct. 338; *Pacific Employers Insurance Company* v. *Comm'n,* 306 U.S. 493, 74 L.Ed. 926, 59 S.Ct. 629.

Petitioners cite *Holder* v. *Holder,* Okla., 384 P.2d 663, but this case is not in point and there is no conflict between such case and the opinion of the 10th Circuit Court. In such case the plaintiff urged the Oklahoma Court to allow her to sue her husband on an accident that occurred in Missouri. The plaintiff argued that, even though the Missouri law did not permit suit by wife against husband, that it should be engrained into the action by the Oklahoma court as a matter of public policy because wives may sue husbands in Oklahoma. This is not analogous to the case at bar, of course, because the mere fact that Oklahoma permits wife to sue husband does not give rise to a Missouri cause of action.

CONCLUSION

We submit that it is only by a strained interpretation that the Plaintiffs can contend that sale of a security took

place in California. We point out that no fraud is involved in this cause, and that the Circuit Court of Appeals found there was ample evidence that there was no fraud. (See text of such opinion, page viii, to Appendix B of Plaintiffs' Petition for Writ of Certiorari); that there was no violation of the Federal Securities Act, because the transaction was a private transaction and no public offering was being made by the Defendant, and that the Plaintiffs did not contend that there was any violation of the Federal Securities Act; that, under all of these circumstances, the trial court very properly withheld relief against the Defendant Morgan for the reason that it would have been inequitable and unjust and that it was definitely contrary to the public policy of Oklahoma to permit the requested enforcement of the local foreign California statute under the very narrow confines urged by the Plaintiffs for their own benefit, and that it was proper, as a matter of the law of comity, to withhold judgment; and that such application of the law of comity is in no way in conflict with the full faith and credit clause of the Constitution. We submit that the Plaintiffs have not shown any reason for granting a Writ of Certiorari. The Respondent respectfully requests that the Writ of Certiorari be denied.

Respectfully submitted,

GEO. L. VERITY
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Oklahoma City, Oklahoma
Attorney for Respondent

Of Counsel:

BROWN, VERITY & BROWN

December, 1967

APPENDIX

ITEM 1: Excerpt from testimony of Plaintiff, Dr. Ernest Gaillard, Jr., R. 165 and 166:

Q. And do you recall how much money you paid for
13] that interest? A. Thirty-five thousand.

Q. In December? A. Yes.

Q. Did you acquire any more? A. Yes, there was a similar interest that was acquired, I believe it was later in December, and we paid thirty-six five for it.

Q. Now, what was the occasion of your acquiring this later interest? A. Mr. Morgan said that Mr. Smith, who owned a portion of the James lease, was seriously ill here in Oklahoma City, or seriously ill anyhow, with a kidney condition.

And, as I recall, it was a cancer of the kidney. And he needed the money for medical expenses and things of that sort. Then later in the month, he said he was able to acquire his wife's interest in the James lease, as well.

Q. And so you bought that also, did you? A. Yes.

Q. Did you see Mr. Morgan between those dates? A. No, I don't believe so.

Q. Was anything said with regard to his relationship the transaction? A. Mr. Morgan purchased the interest for us. He told us that he had a similar interest in the
14] East Pason field, and that he would keep his eye on it for us.

Q. Was anything said with regard to the California corporation securities laws or notification? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. Do you know how much money the James lease, or East Pason unit, has returned to you and Mrs. Gaillard, to date? A. No, I do not.

[APPENDIX]

Q. Do you have figures that would reflect this information? A. I have figures as of last year's in. I don't have the figures compiled for—I mean, for 1963, not 1964.

Q. You have the figures through 1963? A. Yes, sir.

Q. How much is that, have you calculated this on a sheet? A. This sheet was shown to me yesterday by Mr. Irvine, who obtained it from the auditors, Bonney, Camp, Keeling & Smith. Mr. Smith prepared it.

I have not verified these figures from my records but this shows total receipts of seventy-five thousand, eight hundred and sixty-one dollars and seventy-four cents, from the Smith interest.

15] Q. Could I see the sheet, please? A. Yes.

Mr. Irvine: Surely.

(Thereupon, an off the record discussion was held.)

Q. (Mr. Verity) Dr. Gaillard, I realize that you are not familiar with this, but I notice columns three and four are both James lease, one says, "NTS" and the other "ACS." A. They represent the two interests that I secured.

Q. That you obtained at two different times? A. Yes.

Q. Then, if I read this rightly, from the James lease NTS, the accumulation as of the end of 1963, was seventy-five thousand eight hundred and sixty-one dollars and seventy-four cents. A. Yes.

Q. And on the James lease ACS, the accumulation at the end of 1963, was seventy-five thousand two hundred and forty-four dollars and four cents. A. Right.

Q. As far as you know, this is correct? A. Yes.

ITEM 2: Letter Agreement between Plaintiffs and Fred Morgan, R. 149, Introduced in Pre-trial as a Joint Exhibit, R. 66

Joint Exhibit 1

Fred Morgan
Liberty Bank Building
Oklahoma City, Oklahoma

June 22, 1960

Dr. Ernest Gaillard, Jr., 6303 La Jolla Scenic Drive, La Jolla, California.

Dear Bill: In line with our recent conference relative to the drilling of the No. 1 Throckmorton in the NW/4 of Section 6-18N-7W, Kingfisher County, Oklahoma, which is subject to a 1/6th of 7/8ths Overriding Royalty, I agree to drill this well to a total depth not to exceed 7,500', to turn-key all cost to the casing point and assign you 1/8th interest in the lease and well for the sum of $1.00 per foot or not to exceed $7,500.00, plus 1/8th of $1,500.00 expense paid to E. C. Harlin, Jr.

In the event of a dry hole, you are to receive 1/8th of the dry hole $30,000.00 payments contributed by the various Companies owning surrounding acreage which will equal 50¢ per foot refund to you.

In the event production is found, you are to pay your 1/8th (12 1/2%) of the necessary tangible equipment, completion cost, etc.

We have placed the SE/4 of Section 36-9N-8W, in line for bids which will be sold on or about August 1, 1960. If we are the successful bidder you have the right to buy a 1/8th (12 1/2%) interest in this lease which is a diagonal offset to our drill site 160 at actual cost.

If this meets with your approval, please note your acceptance on the line provided below and return one copy to us for our files:

Accepted:
Dr. Ernest Gaillard, Jr.

Yours very truly,
Fred Morgan

June 25, 1960.

ITEM 3: Finding No. 10 by the trial court:

10. That the Plaintiffs' Complaint is based solely on alleged violations of the California Securities Code by Fred Morgan and that there is no comparable substantive or statute law in the State of Oklahoma, but, to the contrary, the statute law of the State of Oklahoma, at 12 OSA Sec. 2(1), expressly provides that oil and gas transactions are not securities and that it is contrary to the public policy of the State of Oklahoma to regulate oil and gas transactions as securities.

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JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 848

ERNEST GAILLARD, JR., and MIGNONNE NASH GAILLARD,
Petitioners,

VERSUS

FREDDIE MORGAN FIELD, Administratrix of the Estate of Fred Morgan, Deceased,
Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

WILLIAM WALTER HENTZ, JR.
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Attorneys for Petitioners

January, 1968

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0030

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

This brief is in reply to Respondent's brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

ARGUMENT

Respondent, as she did in the courts below, has attempted to cloud the issue in this cause by asserting that petitioners have sued to set aside as void only those transactions which were unprofitable to them and are retaining the profitable transactions. Such assertions do not appear in the argument section of the brief in opposition but are set forth in the guise of facts under respondent's Statement of the case.

The same appeal was made to the Court of Appeals and was rejected by that Court since it did not even consider the question in its opinion, but rather decided the matter on the ground that the difference accorded by California and Oklahoma to oil and gas transactions made it appear "that application of California law to void the letter agreements and assignments would violate a deep-rooted tradition of the common weal in Oklahoma" (Appendix B of Petition, p. xi).

In the Statement of the Case in the Petition for Certiorari, petitioners have set forth the details of the purchase of interests in the James lease in Lincoln County, Oklahoma, and the Lingerfelt and Tiffin leases in Pottawatomie County, Oklahoma (Petition, pp. 4-5). As recounted there and shown in the record, the interests in the Lingerfelt and Tiffin leases were purchased from Mr. Bob Field, an employee and son-in-law of Fred Morgan, as an independent transaction, and Mr. Morgan had no interest in the leases or the transaction other than bringing the parties together (R. 181-182, 232). The James lease was included in a plan of unitization and was being produced and operated by Gulf Oil Corporation as a part of such plan. Fred Morgan purchased an interest in the James lease from a third party for his wife, but instead sold the interest to the petitioners and acted as an intermediary when petitioners purchased a second interest in the lease (R. 212-213).

Section 26100 of the Corporations Code of California provides:

> "Every security of its own issue sold or issued by any company without a permit of the Commissioner

then in effect authorizing the issuance or sale of the security is void" (Petition, Appendix A, p. iii).

The California Courts have consistantly interpreted the word "void" to mean *voidable at the option of the purchaser. Domestic and Foreign Petroleum Co.* v. *Long,* 4 Cal.2d 547, 51 P.2d 73 (1935); *Langharn* v. *Bank of America Nat'l Trust & Savings Ass'n,* 88 F.2d 551 (9th Cir. 1937); *Julian* v. *Schwartz,* 16 Cal. App.2d 310, 60 P.2d 887 (1936). It is under this section of the California statutes that petitioners have elected to void and rescind the sales of securities to them by Fred Morgan.

Even the most cursory glance at the facts shows that Fred Morgan did not own any of the interests sold to the petitioners in the Lingerfelt and Tiffin leases or in the second interest purchased by petitioners in the James lease. They cannot conceivably be securities of his own issue sold by Fred Morgan, and they are not subject to the voiding provisions of the statute.

Further, although Fred Morgan owned the first interest in the James lease for a brief period he did not have the control, supervision or operation of the interest. This was vested in Gulf Oil Corporation under the plan of unitization. Thus under the California decisions this interest was not a security. *Domestic and Foreign Petroleum Co.* v. *Long,* 4 Cal.2d 547; 51 P.2d 73 (1935); *Moore* v. *Stella,* 52 Cal. App.2d 766, 127 P.2d 300 (1942). What it really represented was best expressed by Mrs. Ray Cole, wife of Fred Morgan, during the period when he sold the first James lease interest to petitioners, when she testified concerning conversations with Fred Morgan after he became acquainted with petitioners:

Q. "What was said, if anything, in connection with obtaining any properties for Dr. and Mrs. Gaillard?

A. He said 'the wise thing' . . .

Q. You say 'he said.' Who was that?

A. Mr. Morgan. He said, 'the only thing to do, he was first going to get them a sure thing * * * that he was going to let Dr. Gaillard have the James lease, he wanted him to have it because he wanted to get him a good paying lease; that he would go ahead and get these other friends of us (*sic*) to start spending money for the wildcat investments . . .'." (R. 99-100, 207).

Respondent, to further becloud the issue, set out in detail the testimony of one of the petitioners, Dr. Gaillard, concerning the initial cost of the interests in the James lease as compared to the gross return from said interests. What respondent carefully failed to show was the fact that petitioners paid out large sums in operating expense and that the gross return does not present either a fair or an accurate picture (R. 96-97). It represents merely a large number which respondent apparently hopes will influence the Court.

If, however, we assume that the interests in James, Lingerfelt and Tiffin leases were securities of Morgan's own issue and thus subject to the voiding provisions of Section 26100, the petitioners *were not required* to include them in this proceeding. As shown above California Courts have held the word "void" to mean "voidable at the option of the purchaser." As the sale of each interest constitutes the sale of a separate security, each such sale is voidable at the option of the petitioners without reference to any other sale or sales.

The interests in the James, Lingerfelt and Tiffin leases, whether profitable or unprofitable, are quite simply not a part of this action.

Respondent's Proposition No. 1

Respondent urges as her Proposition No. 1 that the full faith and credit clause of the Constitution does not set aside the law of comity which denies petitioners the right to enfore the California Securities Statute in this case where (A) there is no comparable substantive or statute law, or (B) such California local law is contrary to public policy or would work an unjust hardship upon a citizen of the Oklahoma jurisdiction.

To support this contention, the respondent cites *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Wallace*, 223 U.S. 481, 56 L.Ed. 516, 32 S.Ct. 205 (1912); *Fowler* v. *Lamson*, 164 U.S. 252, 41 L.Ed. 424, 17 S.Ct. 112 (1896); *Carroll* v. *Lanza*, 349 U.S. 408, 99 L.Ed. 1183, 75 S.Ct. 804 (1955); and *Hoppeston Canning Co.* v. *Cullen*, 318 U.S. 313, 87 L.Ed. 777, 63 S.Ct. 602 (1943).

In *Galveston, Harrisburg & San Antonio Ry. Co.* v. *Wallace, supra*, the question before the Court, as noted by the language quoted by respondent, was "whether a state court may enforce a right of action arising under an Act of Congress." The Court then stated "that the jurisdiction of state courts extends to the hearing and determination of any civil and transitory cause of action created by a foreign statute, provided it is not of a character opposed to the public policy of the state in which the suit is brought."

The petitioners submit that this language merely recognizes the general rule that a foreign law may be denied

enforcement on the basis of the public policy of the forum, but it is certainly not an expression of what is "public policy" and in what specific instances such policy may be applied.

The respondent cites *Fowler* v. *Lamson, supra,* and contends that the Supreme Court there refused to overrule the Illinois Supreme Court where it had refused to enforce "a statutory liability under a Kansas statute providing for a special remedy against the stockholders." The quotation from the opinion as set out in respondent's brief is very much out of context. In such quotation, the Court was merely reviewing what action was taken in the Illinois Court as could be determined from the record before them. After reviewing the record, this Court stated:

> "It will be seen that there are no pleadings in the record; no evidence is returned; no exceptions to any decision of the court are to be found; no request to the court to find upon any federal question; no refusal of the court to find, and no finding upon, any such question. Thus, there is an entire absence in this whole record of any fact showing that the supreme court of Illinois, or either of the lower courts, decided any federal question whatever. * * *" 17 S.Ct., at p. 113.

This Court then denied jurisdiction. As can be easily seen, this Court made it quite clear that from the *record before you,* no federal question was presented for its determination, and there is certainly no expression by this Court on the subject of full faith and credit.

In *Carroll* v. *Lanza, supra,* an employee was employed in Missouri but injured in Arkansas. The Missouri Compensation Act provided that the parties to such an employ-

ment contract made in Missouri shall be presumed to have elected to accept its provisions. After the employee was injured in Arkansas, he brought suit against a third party for common-law damages, an action that would have been barred by the Missouri Compensation Act. In answer to the contention that Missouri law applied, this Court stated:

> "* * * Arkansas, the State of the forum, is not adopting any policy of hostility to the public Acts of Missouri. It is choosing to apply its own rule of law to give affirmative relief for an action arising within its borders.
>
> "Missouri can make her Compensation Act exclusive, if she chooses and enforce it as she pleases within her borders. Once that policy is extended into other States, different considerations come into play. Arkansas can adopt Missouri's policy if she likes. Or, as the Pacific Employees Insurance Co. case teaches, she may supplement it or displace it with another, insofar as remedies for acts occurring within her boundaries are concerned. Were it otherwise, the State where the injury occurred would be powerless to provide any remedies or safeguards to nonresident employees working within its borders. We do not think the Full Faith and Credit Clause demands that subserviency from the State of the injury." 349 U.S., at 413-414.

It is clear from the above language that the controlling point was the forum's right to apply its own law to an injury that occurred within its boundaries. It is difficult to see how the decision is applicable to the instant situation where the forum state had few, if any, contracts with the transactions which constitute the sale of securities to California residents in the State of California. Indeed, it certainly could be said that there is every reason con-

ceivable to apply California law herein to protect California residents from prohibited transactions occurring in California.

In *Hoopeston Canning Company* v. *Cullen, supra,* the appellant was contending that the New York courts could not apply New York law to a contract of insurance made in Illinois, even though such insurance contract covered property in the State of New York. This Court held that New York had authority over property within its borders and stated that "(C)ontracts formerly made in other states may remain subject to the law of the state of the situs of the property, particularly in respect to immoveables."

It is apparent why respondent has cited the above language from *Hoopeston.* She is relying on the false premise that the performance of the contract herein was the drilling of oil and gas wells. It is just as apparent that she has failed to meet the issue involved in this action. As *Hoopeston* holds, a state has authority over property within its borders, but this decision is not applicable to the transaction herein which constituted the sale of securities in the State of California. There is absolutely no issue in this suit concerning Oklahoma's (or any of the other states where wells were to be drilled) authority over the oil and gas wells drilled on the property in which interests were purchased by the petitioners.

The cases cited by respondent wholly fail to sustain respondent's Proposition No. 1 and the question remains to be answered by this Court as to whether the refusal of the courts below to enforce the law of California violates the Full Faith and Credit Clause of the Constitution of the United States.

Likewise remains the question whether the public policy of Oklahoma refuses recognition of the law of California which recognizes a certificate of interest in an oil, gas or mining title or lease as a security, when Oklahoma does not recognize such an interest as a security.

The reasons for granting the writ as outlined in the petition are unassailed and pertinent and petitioners renew their prayer that the petition for writ of certiorari be granted.

Respectfully submitted,

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Attorneys for Petitioners

January, 1968